IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1261 OF 2000

Shri Salunkhe Anil Ramrao .. Petitioner

versus

The President/Secretary, Samaj Seva Mandal, & 4 ors .. Respondents

Ms.Kumud Bhatia for Petitioner

Ms.S.S.Bhende, Assistant Government Pleader for Respondent nos. 3 to 5.

CORAM : S.B.MHASE AND D.G.KARNIK, JJ

DATED : 8th February, 2006

P.C.

1. Heard.

2. By this petition, the petitioner prays for a writ directing that the respondent nos. 3 to 5 to grant approval to the petitioner's salary as a trained graduate Assistant Teacher in the new school, namely Shivaji Vidyalaya, Kurla, Mumbai wherein he is absorbed..

3. The petitioner is B.A.B.Ed and was initially employed in the respondent no. 2 college as a

trained graduate Assistant Teacher. On account of diminishing of the strength of the students in the respondent no. 2 school, the petitioner became surplus teacher and accordingly his services were liable to be terminated. The petitioner made a request for being absorbed in any other aided school and consequently by an order dated 9th July, 1999 the School Tribunal, Mumbai directed that the petitioner be absorbed in any other school where there was a vacancy available. This appears to have been done under Rule 26 of the M.E.P.Rules.

4. There was no vacancy of a graduate Assistant Teacher in any other school and therefore, the petitioner would have been required to be kept in the waiting list. Instead, the petitioner was given an option to take employment in the vacancy of an under graduate scale which was available in the new school i.e. Shivaji Vidyalaya. The petitioner chose the said option and accepted the appointment to the post of an under graduate teacher. Learned Assistant Government Pleader hands in a copy of the letter dated 13th June, 1998 written by the petitioner to the respondent no. 3 accepting the appointment in the vacancy of an under graduate teacher in that pay scale. The petitioner now claims that he should be granted a

graduate pay scale.

5. In our view, the petitioner cannot approbate and reprobate. He would have been required to remain unemployed till the vacancy in the graduate pay scale arose in any school; instead he chose to accept the appointment in the vacancy in the under graduate pay scale and was accordingly granted the said pay scale. After voluntarily occupying the job of an assistant teacher in the vacancy of an under graduate pay scale, he cannot claim salary of a trained graduate teacher's scale. There is therefore, no merit in the petition.

6. However, we are of the view that if any vacancy occurs in the school where the petitioner is presently employed in the graduate trained teacher's pay scale, the said pay scale shall be offered to the petitioner on the basis of seniority.

7. With this direction, the petition is disposed of.

(D.G. KARNIK, J) **(S.B.MHASE, J)**